

N.D.A.G. Letter to Rohrich (June 9, 1989)

June 9, 1989

Mr. F. C. Rohrich
Linton City Attorney
P.O. Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your May 18, 1989, letter concerning a proposed city ordinance addressing the hiring of city police officers. We have also received a letter from the Linton mayor and members of the Linton city council.

From these various materials, it appears that the proposed ordinance is designed to accomplish the following goals:

1. Require the mayor and a committee of two or more aldermen to conduct all interviews of the applicants for police officers for the city of Linton.
2. Require the mayor's appointment of a police officer to be subject to the approval of the city council.
3. Authorize the city council to establish the salary and benefits offered to all police officers.

The city of Linton is not a home rule city. Thus, home rule city powers provided by N.D.C.C. § 40-05.1-06 are not applicable.

A city enjoys only those powers the Legislature authorizes. N.D. Const. art. VII, § 2. The powers of a non-home rule city are listed at N.D.C.C. §§ 40-05-01, 40-05-02. A city ordinance may not be adopted if it is "repugnant to the constitution and laws of this state." N.D.C.C. § 40-05-01(1); State ex rel. City of Minot v. Gronna, 59 N.W.2d 514 (N.D. 1953); Quam v. City Fargo, 43 N.W.2d 292 (N.D. 1950). Thus, the proposed ordinance must be reviewed to determine whether a city is authorized by state law to adopt such an ordinance and whether the ordinance is "repugnant to" state law.

Two state statutes appear to be applicable to this dispute. N.D.C.C. § 40-05-02(9) authorizes a city council to "regulate the police of the municipality."

N.D.C.C. § 40-08-27 states that the mayor may appoint any number of policemen which he and the city council deem necessary. The latter statute requires the mayor's appointment of a police chief to be subject to the approval of the city council. As I concluded in my April 4, 1988, letter, N.D.C.C. § 40-08-27 contains no provision requiring the city council to approve the mayor's appointment of police officers. However, the issue

presented here involves the validity of a city ordinance which would allow the city council to approve police officer appointments. This situation was not addressed in my April 4, 1988, letter.

The provisions of the proposed ordinance describing the interview process of the applicants and authorizing the city council to establish the salary and benefits offered to police officers appears to be a proper exercise of a city council's authority to regulate the police of the municipality pursuant to N.D.C.C. § 40-05-02(9). These provisions violate no provision within N.D.C.C. § 40-08-27 or elsewhere.

The remaining issue is whether the proposed ordinance provision requiring city council approval of the mayor's appointment of police officers is repugnant to N.D.C.C. § 40-08-27. If this provision is "repugnant to" state law, it is unenforceable as a violation of N.D.C.C. § 40-05-01(1). If not, then that provision of the ordinance complies with state law and may be considered by the city council.

The term "repugnant," as used in N.D.C.C. § 40-05-01(1), is not defined by statute. N.D.C.C. § 1-02-02 states that words used in a statute not defined must be understood in their ordinary sense. "Repugnant" is defined to mean "incompatible, inconsistent, or hostile." Webster's New Collegiate Dictionary 983 (1975).

Applying the common-sense definition of "repugnant," the proposed ordinance's provision requiring council approval of the hiring of city police officers is not incompatible or inconsistent with N.D.C.C. § 40-08-27. By this statute, the Legislature has authorized the city council to approve the mayor's appointment of a chief of police. See letter from Attorney General Spaeth to F. C. Rohrich (April 4, 1988); letter from Special Assistant Attorney General Gerald VandeWalle to Otto Kasper (January 16, 1961). Although the statute affirmatively authorizes the city council to approve the mayor's appointment of the chief of police, it is silent as to whether a city council may also give itself the authority, through an ordinance, to approve the mayor's appointment of other police officers. The statute provides no basis to infer or imply a legislative intent to prevent the city council from assuming this authority through an ordinance.

The proposed ordinance, thus, is not repugnant to N.D.C.C. § 40-08-27 and may be enacted by the city council pursuant to its authority to regulate the city police. N.D.C.C. § 40-05-02(9). Thus, the ordinance may be considered by the city council for purposes of adoption.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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cc: Syd Lawler